involves determining the very point which the evidence is offered to prove. *Hichens* v. *Eardley*, L. R. 2 P. & D. 248. The principal case is the strongest test of the rule, as the inadmissibility of the wife's evidence depends in substance on the prisoner's guilt. The decision is important in that it meets the problem squarely, and does not attempt to evade the question by a vague ruling based upon the court's discretion.

LEGACIES AND DEVISES — VOID OR VOIDABLE BEQUESTS AND DEVISES — GIFT TO WIFE WHILE LIVING APART FROM HUSBAND. — A testator bequeathed stock to trustees to pay his daughter A the income during such time as her husband should be living apart from her; and in the event of their living together again, over. A's husband had deserted her and she still lived apart from him. *Held*, that the bequest contravenes no public policy and is valid. *Re Charleton*, 55 Sol. J. 330 (Eng., Ch. Div., Feb. 24, 1911).

The court, in pointing out that no illegality is here involved, lays stress on the facts that A had already been deserted by her husband and that the provision was intended, not to bring about a separation, but merely to provide for the decent maintenance of the wife until her husband should return. In the closely analogous case of restraints upon marriage, the donor's intent seems the controlling factor. But see 24 HARV. L. REV. 405. Thus a devise to a woman so long as she remains single, it appearing that the testator's object is not to prevent matrimony but only to provide for the devisee while she stays single, is valid. *Arthur* v. *Cole*, 56 Md. 100. See 14 HARV. L. REV. 614. "A purpose of intermediate maintenance will not be interpreted maliciously to a charge of restraining marriage." *Scott* v. *Tyler*, 2 Dick. 712, 722. The same rule is properly to be applied in situations such as the principal case presents. Thus it has been held that if the purpose of the gift is to induce the beneficiary to leave her husband, the provision violates public policy and the usual rules as to the effect of the illegality upon the condition or limitation apply. *Re Moore*, 39 Ch. D. 116.

MILITIA — CIVIL LIABILITY — ACTS DONE IN OBEDIENCE TO ORDERS. — The defendant, a militiaman on riot duty, under orders to arrest all passers-by carrying concealed weapons, arrested the plaintiff who had a pistol in his buggy. The plaintiff sued for false imprisonment. *Held*, that he may recover. *Franks* v. *Smith*, 134 S. W. 484 (Ky.). See NOTES, p. 656.

MINES AND MINERALS — LOCATION OF CLAIMS — EXCESSIVE LOCATION. — In locating a mining claim the defendant marked the boundaries of the side lines within three hundred feet of the supposed course of the center of the vein. Part of the ground so located proved to be more than three hundred feet from the true course of the vein. *Held*, that such part of the location is not excessive as against the claims of subsequent locators. *Harper* v. *Hill*, 113 Pac. 162 (Cal., Sup. Ct.).

The statute provides that a mining claim shall not exceed in width three hundred feet on each side of the middle of the vein at the surface. U. S. REV. STAT., 1878, § 2320. On the theory that the right to the surface continued, as under the prior act of 1866, to be incidental and dependent upon the right to the vein, it has been held that if a vein unexpectedly terminates before reaching an end line, the location beyond that point is void. *Patterson* v. *Hitchcock*, 3 Colo. 533. So also, in a case like the present, any ground proving to be more than three hundred feet from the vein has been held to be excess, though the location has not exceeded six hundred feet in width. *Southern California Ry. Co.* v. *O'Donnell*, 2 Cal. App. 499. Such a strict construction of the statute has been justly criticized, because it makes all locations "floating" until the exact course of the vein is ascertained, and because the acquisi-

tion of extralateral rights may be prevented by the departure of the vein through a side line; since the drawing in of the boundaries might prevent the end lines from being parallel. COSTIGAN, MINING LAW, § 55 a (2). In reaching an opposite result the principal case is supported by one other case. *Watervale Mining Co.* v. *Leach*, 4 Ariz. 34.

PARTNERSHIP — RIGHTS, DUTIES, AND LIABILITIES OF PARTNERS INTER SE — ACCOUNTING FOR PROCEEDS OF ILLEGAL PARTNERSHIP. — The plaintiff, a married woman, cohabited with the defendant, a bachelor, under a partnership agreement to prove up a homestead in the defendant's name. They did so, sold the homestead, and part of the proceeds were invested in other land by the defendant under a subsequent agreement with the plaintiff. *Held*, that, since the illegal transaction was completed, the plaintiff is entitled to an accounting. *Mitchell* v. *Fish*, 134 S. W. 940 (Ark.).

When partners are engaged in a transaction contrary to public policy, courts will not aid one against the other, but will leave them where they are. *Snell* v. *Dwight*, 120 Mass. 9; *Jackson* v. *Executors of McLean*, 100 Mo. 130. But a transaction independent of the illegal business is valid. *Guilfoil* v. *Arthur*, 158 Ill. 600. Just how far collateral the transaction must be, that it may not be tainted by the original illegality, is a matter of much controversy. Some courts have decreed an accounting when the illegal business was completed, on the ground that the origin of the fund would not be investigated. *Planters' Bank* v. *Union Bank*, 16 Wall. (U. S.) 483. *Contra*, *Craft* v. *McConoughy*, 79 Ill. 346. Other courts will enforce a subsequent contract to divide the proceeds of the illegal transaction. *De Leon* v. *Trevino*, 49 Tex. 88. Many courts decree an accounting where the proceeds of the illegal venture have been reinvested. *Brooks* v. *Martin*, 2 Wall. (U. S.) 70. The test often suggested is whether the plaintiff must rely on the illegal transaction in order to maintain his case. *Woodward* v. *Bennett*, 43 N. Y. 273. See PAGE, CONTRACTS, § 527. Undoubtedly, also, the degree of illegality must be considered. Though the authorities are abundant establishing these exceptions to the general rule against aiding a party to an illegal transaction, there seem to be strong considerations against them, for their effect is that the illegal agreements actually are carried out. See *McMullen* v. *Hoffman*, 174 U. S. 639.

POWERS — GENERAL POWERS OVER PERSONALTY: WHAT LAW GOVERNS APPOINTMENT BY FOREIGN WILL. — The donee of an English power was domiciled in Holland. By the laws of Holland no person may dispose by will of over seven-eighths of his property, the devolution of the residue being prescribed by law. By a will executed in accordance with all the formal requisites of both countries, she left to her husband "all the property which the law would allow her to dispose of." *Held*, that the husband took the entire property subject to the power, not merely seven-eighths. *Re Pryce*, 130 L. T. 415, (Eng., Ch. D., Feb. 20, 1911). See NOTES, p. 654.

PUBLIC OFFICERS — COMPENSATION — RIGHTS OF DE FACTO OFFICERS. — During 1910 the plaintiff served as city marshal. His title to office, however, was invalid, for he had not been appointed in the manner prescribed by statute. He, nevertheless, performed all the duties of marshal and then sued for the salary. This he claimed was due him as *de facto* marshal, for no *de jure* officer had been appointed. *Held*, that he may recover the full salary. *Peterson* v. *Benson*, 112 Pac. 801 (Utah). See NOTES, p. 658.

RAILROADS — REGULATION OF RATES — POWERS OF THE STATES. — The state of Minnesota passed acts reducing intrastate freight rates from 7 to 25 per cent, and intrastate passenger rates $33\frac{1}{3}$ per cent, the new rates allowing